

No. 14222

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United States  
Court of Appeals  
for the Ninth Circuit.

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METROPOLITAN FINANCE CORPORATION  
OF CALIFORNIA,

Appellant,

vs.

CLIFTON C. PIERCE and EILEEN E. PIERCE,

Appellees.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division

FILED

MAR 22 1954

PAUL P. O'BRIEN  
CLERK



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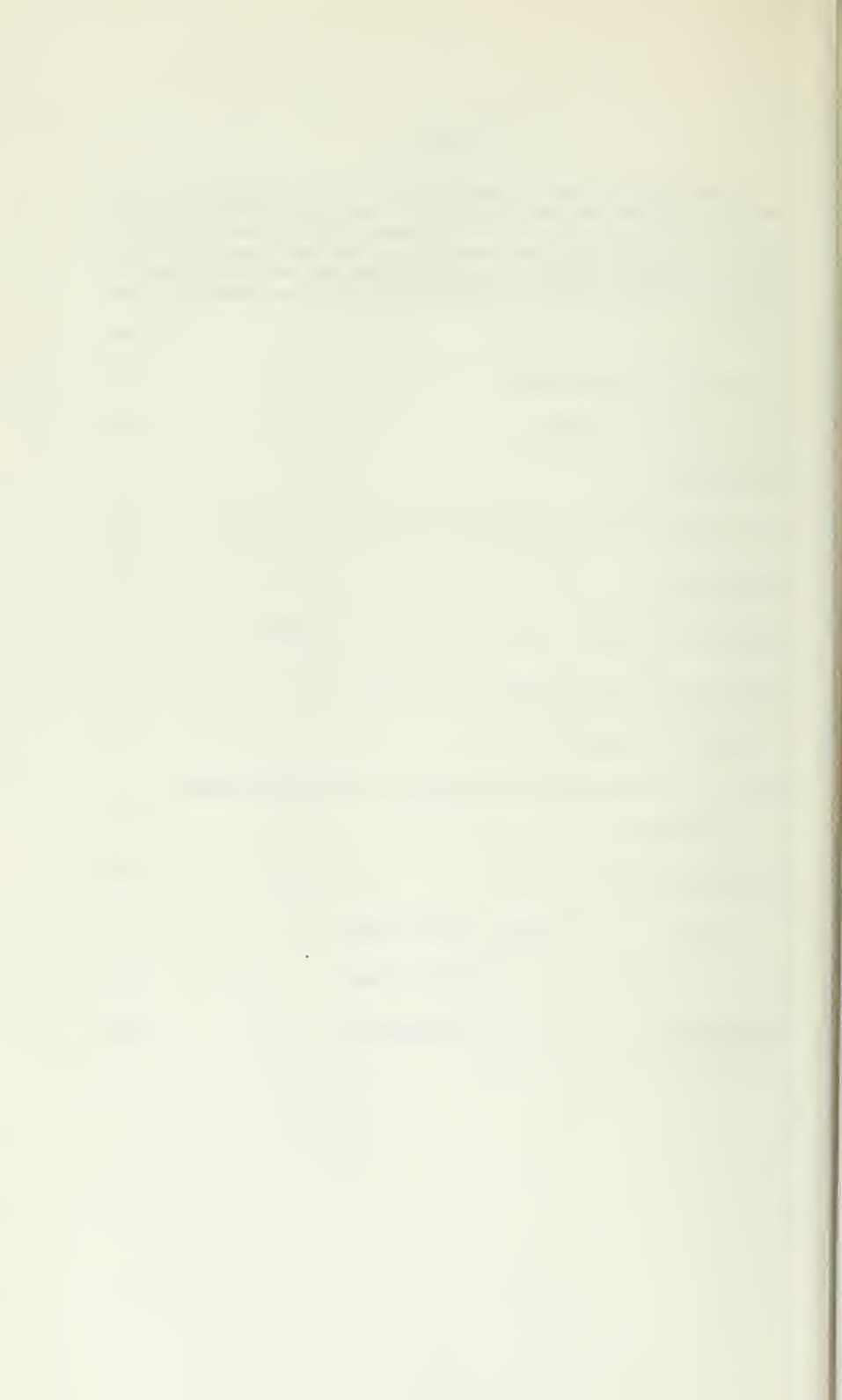
**Appeal from the United States District Court for the  
Southern District of California,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

MACFARLANE, SCHAEFER & HAUN,  
1150 Subway Terminal Bldg.,  
Los Angeles 13, Calif.

For Appellees:

JOSEPH D. FLAUM,  
WALTER L. BRUINGTON,  
WALTER L. M. LORIMER,  
6399 Wilshire Blvd.,  
Los Angeles 48, Calif.





In the District Court of the United States for the  
Southern District of California, Central Division

No. 14,612-WB

METROPOLITAN FINANCE CORPORATION  
OF CALIFORNIA, a Corporation,

Plaintiff,

vs.

CLIFTON C. PIERCE, EILEEN E. PIERCE,  
JOHN DOE, JANE DOE and RICHARD  
ROE CORPORATION, a Corporation,

Defendants.

### COMPLAINT

(Breach of Contract and Money Had  
and Received)

Comes now plaintiff and complains of the de-  
fendants and for cause of action alleges:

#### I.

That plaintiff is a corporation incorporated un-  
der the laws of the State of Delaware. That the  
defendants are citizens of the State of California,  
and that there is thus a diversity of citizenship  
between plaintiff and defendants.

#### II.

That the matter in controversy exceeds, exclusive  
of interest and costs, the sum of Three Thousand  
(\$3,000.00) Dollars, to wit, the sum of Three Thou-

sand Four Hundred Sixteen and 66/100 (\$3,416.66) Dollars.

### III.

That the defendants John Doe, Jane Doe and Richard Roe Corporation, a corporation, are sued herein under fictitious names, their true names being at this time unknown, and plaintiff prays that when their true names are affirmed that it may have leave of court to amend this complaint to insert said true names [2\*] in place and stead of said fictitious names.

### IV.

That on or about the 5th day of January, 1952, the defendants in writing accepted an offer of the plaintiff dated December 28, 1951, for the sale and exchange of certain real and personal property. That said agreement included the transfer from defendants to plaintiff of certain water, water rights, ditches, ditch rights, ditch shares, ranch rights, pasture rights and all rights of every kind and nature appurtenant to, appertaining to or attaching to the real property then belonging to defendants, and which said defendants exchanged pursuant to the contract and transfer to this plaintiff. That among the appurtenant rights being transferred with said real property from defendants to plaintiff were One Thousand One Hundred Twenty-one and 3/9 (1,121 3/9) shares of the Old Channel Ditch Company stock and Two Thousand Eight Hundred Fifty-six (2,856) shares of Young Ditch Company stock.

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

It was further provided in said agreement that all expenses affecting said property being transferred from defendants to plaintiff should be pro-rated as of the date the exchange was completed and consummated, which was defined as the closing date of the escrow.

V.

That on or about the 7th day of January, 1952, the plaintiff and defendants executed escrow instructions to the California Bank, Beverly Hills Office, Beverly Hills, California, for the purpose of consummating the said agreement and, among other things, it was provided in said escrow instructions that the said instructions were not in any way to be construed to alter, supersede, cancel or change the previous agreement of the parties heretofore referred to. That said escrow was completed and closed, and the documents transferring title of various properties therein exchanged were recorded on April 9, 1952.

VI.

That on or about the 27th day of March, 1952, at a special meeting of the board of directors of the Young Ditch Company, a corporation, an assessment of One (\$1.00) Dollar per share was levied on the outstanding capital stock of said corporation. Notice of assessment was thereafter sent to stockholders of said corporation under date of March 27, 1952, specifying that any stock upon which the [3] assessment remained unpaid on May 15, 1952, would be delinquent and advertised for sale at public auction, and would be sold to pay any delinquent as-

assessment together with any cost of advertising or expenses of sale.

That the assessment on the shares of the Young Ditch Company stock, a corporation, transferred from the defendants to the plaintiff pursuant to the agreement heretofore described, amounted to the sum of Two Thousand Eight Hundred Fifty-six and no/100 (\$2,856.00) Dollars, being One (\$1.00) Dollar per share for the Two Thousand Eight Hundred Fifty-six and no/100 (2,856) shares of said stock.

#### VII.

That on or about the 7th day of April, 1952, at a meeting of the board of directors of the Old Channel Ditch Company, a corporation, an assessment of fifty (50) cents per share was levied upon the outstanding capital stock of the said corporation. Notice of assessment was thereafter sent to stockholders of said corporation under date of April 10, 1952, specifying that any stock upon which the assessment remained unpaid on May 15, 1952, would be delinquent and advertised for sale at public auction and would be sold to pay any delinquent assessment together with any costs of advertising or expenses of sale.

That the assessment on the shares of stock of the Old Channel Ditch Company, a corporation, transferred from the defendants to the plaintiff pursuant to the agreement heretofore described amounted to the sum of Five Hundred Sixty and 66/100 (\$560.66) Dollars, being Fifty (50) cents per share

for the One Thousand One Hundred Twenty-one and  $\frac{3}{9}$  (1,121- $\frac{3}{9}$ ) shares of said stock.

### VIII.

That on or about the 14th day of April, 1952, plaintiff in writing notified the defendant Clifton C. Pierce of the assessment theretofore made by the Young Ditch Company in the sum of Two Thousand Eight Hundred Fifty-six and no/100 (\$2,856.00) Dollars, and demanded of said defendants that they remit to plaintiff the sum of Two Thousand Eight Hundred Fifty-six and no/100 (\$2,856.00) Dollars in order that the said plaintiff could pay assessment theretofore levied by the said Young Ditch Company and release said stock of the lien placed upon it by reason of said assessment. That on or about the 16th day of April, 1952, plaintiff, having received no reply to its demand upon the defendants that they pay the said [4] assessment of the Young Ditch Company in order not to become delinquent in the payment of said stock and in order not to have such stock sold at public auction and thus lose said appurtenant stock, paid to the said Young Ditch Company the sum of Two Thousand Eight Hundred Fifty-six and no/100 (\$2,856.00) Dollars in payment of said assessment.

### IX.

That on or about the 29th day of April, 1952, plaintiff in writing notified the said Clifton C. Pierce of the assessment theretofore made by the Old Channel Ditch Company in the sum of Five

Hundred Sixty and 66/100 (\$560.66) Dollars and demanded of said defendants that they remit to the plaintiff the sum of Five Hundred Sixty and 66/100 (\$560.66) Dollars together with the sum of Two Thousand Eight Hundred Fifty-six and no/100 (\$2,856.00) Dollars, being the assessment of the Young Ditch Company stock, in order that said plaintiff might pay said assessments and release said stock of the lien placed upon the said stock by reason of said assessments. That on or about the 1st day of May, 1952, plaintiff having received no reply to its demand upon the defendants that they pay the said assessments of the Old Channel Ditch Company, in order not to become delinquent in the payment of said stock and in order not to have such stock sold at public auction and thus lose said appurtenant stock, paid to the Old Channel Ditch Company the sum of Five Hundred Sixty and 66/100 (\$560.66) Dollars in payment of said assessment.

#### X.

That on or about the 12th day of June, 1952, and again on or about the 25th day of July, 1952, the plaintiff in writing demanded of the said defendants that they pay to the plaintiff the sum of Three Thousand Four Hundred Sixteen and 66/100 (\$3,416.66) Dollars, being the total of the two assessments theretofore levied and paid by the said plaintiff in order to free the stock transferred to the plaintiff from the defendants pursuant to their written agreement of January 5, 1952.

XI.

That said defendants have failed, neglected and refused to pay the said sum of Three Thousand Four Hundred Sixteen and 66/100 (\$3,416.66) Dollars, or any part thereof, and there is now due, owing and unpaid to the plaintiff the said sum of Three Thousand Four Hundred Sixteen and 66/100 (\$3,416.66) Dollars from the said [5] defendants.

For a Second, Separate and Distinct  
Cause of Action, Plaintiff Alleges

I.

That paragraphs I, II and III of its first cause of action are incorporated herein by reference as though set forth in full.

II.

That the defendants owe plaintiff the sum of Three Thousand Four Hundred Sixteen and 66/100 (\$3,416.66) Dollars for moneys had and received from the said plaintiff in the amount of Two Thousand Eight Hundred Fifty-six and no/100 (\$2,856.00) Dollars on or about the 16th day of April, 1952, and the sum of Five Hundred Sixty and 66/100 (\$560.66) Dollars on or about the 1st day of May, 1952.

III.

That although demand has been made of the defendants by the plaintiff for the said sum of Three Thousand Four Hundred Sixteen and 66/100 (\$3,416.66) Dollars, the defendants have failed, neglected and refused to pay the said sum of Three

Thousand Four Hundred Sixteen and 66/100 (\$3,416.66) Dollars, or any part thereof, and there is now due, owing and unpaid from said defendants to the plaintiff the sum of Three Thousand Four Hundred Sixteen and 66/100 (\$3,416.66) Dollars.

Wherefore, plaintiff prays judgment against the defendants, and each of them, for the sum of Three Thousand Four Hundred Sixteen and 66/100 (\$3,416.66) Dollars together with interest thereon from the 1st day of May, 1952, for costs of suit incurred herein, for such other and further relief as may be proper in the premises.

MACFARLANE, SCHAEFER &  
HAUN,

RAYMOND V. HAUN,

HENRY SCHAEFER, JR.,

E. J. CALDECOTT,

By /s/ E. J. CALDECOTT,  
Attorneys for Plaintiff.

[Endorsed]: Filed October 16, 1952. [6]

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[Title of District Court and Cause.]

### ANSWER TO COMPLAINT

Come Now, defendants, Clifton C. Pierce and Eileen E. Pierce, separating themselves from their co-defendants herein, and answering for themselves alone, admit, deny, and allege as follows:



I.

Answering paragraph II of plaintiff's alleged first cause of action, these answering defendants have no information or belief on the subject sufficient to enable them to answer and placing their denial upon said ground denies generally and specifically each and every allegation in said paragraph contained.

II.

Answering paragraph IV of plaintiff's alleged first cause of action, these answering defendants have no information or belief on the subject sufficient to enable them to answer those allegations contained in lines 14 to 17, inclusive, of said paragraph [7] and placing their denial on said ground deny generally and specifically each and every allegation contained in said portion of said paragraph.

III.

Answering paragraph V of the alleged first cause of action these answering defendants allege that it was further provided in said escrow instructions executed by the parties, among other things, that the property involved was to be transferred subject to all taxes and assessments levied or assessed subsequent to the date of said instructions.

IV.

Answering paragraphs VI and VII of the alleged first cause of action these answering defendants have no information or belief on the subject sufficient to enable them to answer the allegations con-

tained in said paragraphs, and placing their denial upon said ground deny generally and specifically each and every allegation in said paragraphs contained.

## V.

Answering paragraph VIII of plaintiff's alleged first cause of action these answering defendants admit that plaintiff demanded of defendants that they remit to plaintiff the sum of \$2,856.00; further answering, these defendants have no information or belief sufficient to enable them to answer as to whether or not plaintiff paid the said assessment of the Young Ditch Company, and placing their denial upon such information and belief deny said allegation and except as otherwise admitted herein deny generally and specifically each and every other allegation contained in said paragraph.

## VI.

Answering paragraph IX of the alleged first cause of action, these answering defendants admit that plaintiff demanded of the defendants that they remit to the plaintiff the sum of [8] \$560.66 together with the sum of \$2,856.00; further answering, these defendants have no information or belief sufficient to enable them to answer as to whether or not plaintiff paid the said assessment of the Old Channel Ditch Company and placing their denial upon such information and belief deny said allegation and except as otherwise admitted herein deny generally and specifically each and every other allegation in said paragraph contained.

VII.

Answering paragraph X of the alleged first cause of action, these answering defendants admit that plaintiff demanded of them that they pay to plaintiff said amount. Further answering the said paragraph, save and except as expressly admitted herein, these answering defendants deny generally and specifically each and every allegation in said paragraph contained.

VIII.

Answering paragraph XI of the alleged first cause of action these answering defendants admit that they have failed and refused to pay the said sum of \$3,416.66 or any part thereof. Further answering the said paragraph, save and except as expressly admitted herein, these answering defendants deny generally and specifically each and every allegation in said paragraph contained; and particularly and expressly do they deny that there is now due, owing or unpaid to plaintiff from these answering defendants the sum of \$3,416.66 or any other sum or sums whatsoever, or at all.

For Answer to the Alleged Second Cause of Action in Said Complaint, These Answering Defendants Admit, Deny and Allege as Follows:

I.

Answering paragraph I thereof these answering defendants refer to each, every and all of their answers to paragraphs I, II, and III of the alleged first cause of action contained in the complaint and

by reference thereto incorporate the same [9] herein in the same manner and with like force and effect as if the same were fully set forth herein verbatim.

## II.

Answering paragraph II thereof these answering defendants deny generally and specifically each and every allegation in said paragraph contained, and the whole thereof; and particularly and expressly do they deny that these answering defendants owe to plaintiff the sum of \$3,416.66 or the sum of \$560.66 or any other sum or sums whatsoever, or otherwise, or at all.

## III.

Answering paragraph III thereof, these answering defendants admit a demand by plaintiff and admit that they have failed and refused to pay said sum of money or any part thereof. Further answering the said paragraph, save and except as expressly admitted herein, these answering defendants deny generally and specifically each and every allegation in said paragraph contained; and particularly and expressly do they deny that there is now due, owing or unpaid the sum of \$3,416.66 from defendants to plaintiff or any other sum or sums whatsoever, or otherwise, or at all.

Wherefore, having fully answered, these answering defendants pray that plaintiff take nothing by reason of its complaint herein and that these answering defendants be hence dismissed with their costs of suit incurred herein and for such other

and further relief as to the court may seem meet and proper in the premises.

/s/ JOSEPH D. FLAUM,  
Attorney for Answering  
Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 15, 1952. [10]

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[Title of District Court and Cause.]

#### STIPULATION OF FACT

It Is Hereby Stipulated by and between the parties hereto, by their respective attorneys:

(1) That on or about January 5, 1952, the defendants in writing accepted an offer of the plaintiff dated December 28, 1951, for the sale and exchange of certain real and personal property. A true copy of said offer and acceptance (lacking certain exhibits attached thereto, but irrelevant to this litigation) is attached hereto, entitled "Exchange agreement" and marked Exhibit "A."

(2) On or about January 7, 1952, the parties hereto executed escrow instructions to the California Bank, Beverly Hills Office, Beverly Hills, California, for the purpose of consummating the said sale and exchange. A true copy of said escrow instructions is attached hereto marked Exhibit "B." [12]

(3) Said escrow was completed and closed, and the documents transferring title of the various properties therein exchanged were recorded on April 9, 1952.

(4) The allegations of paragraphs I, II, VI, VII, VIII, IX and X of the complaint are true.

(5) The funds obtained by the Old Channel Ditch Company and the Young Ditch Company as a result of the assessments referred to in paragraphs VI through X of the complaint were used by said companies to pay for the removal of certain willow trees and debris, and otherwise to clean out ditches and water channels for the benefit of the Nevada property which was the subject of said escrow, and for the other properties to which stock in said ditch companies was appurtenant. Assessments for this purpose are made by said companies at irregular intervals, generally not less than three years nor more than five years apart; but for the purposes of this litigation it is hereby stipulated that said assessments shall be considered to be made every four years.

(6) This Stipulation of Fact is solely for the purpose of agreeing as to the existence of the fact, and each party reserves the right, on any trial of the action or in any motion or other proceeding before the Court, to object to any such evidence on any legal ground therefor and to argue the materiality as well as the weight to be given any such evidence in any such trial motion or proceeding before the Court.

Dated: February 20, 1953.

MACFARLANE, SCHAEFER &  
HAUN,

By /s/ E. J. CALDECOTT,  
Attorneys for Plaintiff.

JOSEPH D. FLAUM,  
WALTER L. BRUINGTON and  
WALTER L. M. LORIMER,

By /s/ WALTER L. M. LORIMER,  
Attorneys for Defendants. [13]

## EXHIBIT A

### Exchange Agreement

This Exchange Agreement Witnesseth:

That the undersigned Metropolitan Finance Corporation of California, of Pacific Palisades, County of Los Angeles, State of California, hereinafter called the First Party, hereby offers to exchange the following described real and personal property situated in the County of Los Angeles, State of California, to wit:

Item 1—That certain parcel of income residential real property consisting of lot and four-flat building situated on Beverly Glen Blvd., between Tennessee Street and Olympic Blvd., and legally described as:

Lot 4 in Block 16 of Tract No. 7260, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 78, Pages 64 and 65 of Maps, in the office of the County Recorder of said County.

On the above-described property there exists a current indebtedness in the amount of \$12,-979.24 payable \$160 per month including interest at the rate of 5% per annum, until paid, and evidenced by a First Deed of Trust held by the Western Federal Savings & Loan Association, said encumbrance to be assumed by Second Parties. This loan can be paid in full on any payment date by paying three months' interest on the balance due at that time. Said Item 1 property is being offered on a basis of \$26,500.

Item 2—That certain parcel of residential real property consisting of two and a fraction lots and dwelling house situated at 15000 La Cumbre Drive, Pacific Palisades, and legally described as:

Parcel 1: Lots 13 and 14 in Block 4 of Tract 9377, in the City of Los Angeles, as per map recorded in Book 129, Pages 3 to 7 of Maps, in the office of the county recorder of said county.

Parcel 2: That portion of Lot 12 in Block 4 of said Tract 9377, described as follows:

Beginning at the most easterly corner of Lot 14 in said Block 4; thence South  $7^{\circ} 49' 48''$  East 135.36



feet, more or less, to a point in the curved Southerly line of said Lot 12, distant Westerly thereon 25 feet from the Southeasterly corner thereof; thence Westerly along said Southerly line 75 feet to the Southwesterly corner of said Lot 12; thence North  $14^{\circ} 37' 50''$  West along the Westerly line of said Lot 12, for a distance of 110 feet to the most Westerly corner thereof; thence North  $62^{\circ} 57' 30''$  East along the Northerly line of said Lot 12, for a distance of 85 feet to the point of beginning.

The above described Item 2 property is to be delivered free and clear of all encumbrances except those [14] specified herein. Said Item 2 property is being offered on a basis of \$68,500. Both above described Item 1 and Item 2 properties are subject to all restrictions, taxes, reservations, easements, rights, rights-of-way, conditions and covenants of record, if any.

Item 3—Those certain items of personal property consisting of furniture, furnishings, rugs, carpets, drapes and other household effects, equipment, etc., as shown on an inventory list attached hereto and made a part hereof, and designated as Exhibit "A." Said personal property to be delivered free and clear of all encumbrances. Said Item 3 personal property is being offered on a basis of \$16,000.

Item 4—In addition to its real and personal property hereinbefore described, First Party agrees to deposit into hereinafter named escrow within its time period the sum of \$12,979.24 in

cash, or less if payments have been made on account of principal of the note described under Item 1, said sum to be paid to the Second Parties under the terms and conditions set forth herein,

for the real and personal property owned by Clifton C. Pierce and Eileen E. Pierce, husband and wife, of the County of San Diego, State of California, hereinafter and hereinbefore called the Second Parties, situated in the Counties of Pershing and Lander, State of Nevada, to wit.

Item 1—That certain parcel of ranch real property consisting of 1,999.07 acres of land, more or less, together with and including all the improvements thereon, situated about two and one half miles North of the City of Lovelock, Nevada and legally described as:

Township 27 North, Range 31 East, M.D.M.

Section 3: All.

Section 4: SE $\frac{1}{4}$ ; Lots 1 and 2.

Section 10: Fractional part of the N $\frac{1}{2}$ , and that portion of the SW $\frac{1}{4}$  of said section lying North of the Old Channel Ditch.

Township 28 North, Range 31 East, M.D.M.

Section 26: E $\frac{1}{2}$  of E $\frac{1}{2}$ .

Section 33: E $\frac{1}{2}$  of NE $\frac{1}{4}$ ; SE $\frac{1}{4}$ .

Section 34: All.

Subject To all existing reservations, covenants,

taxes, conditions, easements, restrictions, rights-of-way of record, if any.

On the above-described property (Pierce's Item 1) there exists the following encumbrances: (1) An indebtedness in the amount of \$50,000 payable \$2,500 per year plus interest at the rate of four and one half per cent per annum, until paid, and evidenced by a First Deed of [15] [Trust held by the Prudential Insurance Company of America; (2) There is also another existing indebtedness in the amount of approximately \$42,000, payable \$10,000 on or before November 1st, 1952, and the remaining \$32,000 payable on or before April 1st, 1955, and drawing interest at the rate of 5% (five per cent) per annum (interest payable semi-annually) and is to be evidenced by a Second Deed of Trust. Both of the above-named encumbrances are to be assumed by the First Party.]

[The foregoing bracketed matter appeared as an alteration on the original. (Stamped: Metropolitan Finance Corporation of Calif., /s/ E. S. Shipp. Initialed: H.O.M., C.C.P. and E.E.P.)]

Item 2—Those certain items of personal property consisting of tractors, trucks, farm machinery, equipment, hay, household furnishings and equipment, etc., as shown on an inventory list attached hereto and made a part hereof and designated as Exhibit "B." Said personal property to be delivered free and clear of all encumbrances.

[Item 3—Second Parties agree to deliver, transfer and convey all water, water rights, ditches, ditch rights, ditch shares, range rights, pasture rights, and all rights of every kind and nature appurtenant to, appertaining to, or attaching to their said real property. These rights include 1121.3/9ths shares of Old Channel Ditch Co. stock and 2856 shares of Young Ditch Co. stock. Second Parties warrant that 1269 acres of their said real property are included in the Pershing County Water Conservation District which are entitled to, per acre three and two-thirds acre feet of water per annum, if that amount of water is in the Rye Patch Reservoir. First Party shall have fifteen days from the opening date of said escrow to ascertain whether the figures in this paragraph are correct and if they are found to be correct, then this contract and the said escrow agreement are deemed to be valid and binding on all parties hereto. In the event these said figures are not correct, then First Party has the right to withdraw from this contract and the said escrow agreement with no liability on his part. Second Parties agree to transfer and convey all oil, gas, hydrocarbon and mineral rights, if any, owned by them, and the deed of conveyance shall so recite. All of said items of Second Parties are being considered on a basis of \$203,000, including the amounts of indebtedness thereon.]

[The foregoing bracketed matter appeared

as an alteration on the original. (Stamped: Metropolitan Finance Corporation of Calif., /s/ E. S. Shipp. Initialed: H.O.M., C.C.P. and E.E.P.)]

The parties hereto shall supply policies of title insurance issued by reliable title companies for their respective properties described herein within sixty days from the date of opening of said escrow showing the titles to said properties to be merchantable and free from encumbrances except taxes and the encumbrances herein mentioned, and the hereinafter named agent is authorized to procure and deliver said evidences of title on behalf of all or any of the Parties hereto. Each party shall pay for the evidence of title to the property to be transferred and conveyed by them and the necessary U.S.I.R. stamps on deeds executed by them respectively. Each party hereto shall execute and deliver into said escrow all instruments in writing necessary to transfer and convey the titles to said properties and complete and consummate this exchange.

In the event errors appear in the titles to either or any of said properties, then this agreement shall be extended for a reasonable time, but not exceeding thirty days, that the same may be corrected. In the event any error cannot be corrected within said time this agreement shall be null and void, unless the title to the property affected is accepted subject thereto.

All taxes for the current fiscal year ending June 30th following this date on the California proper-

ties, and [16] the taxes for the year ending December 31st, 1952, on the Nevada property, and the insurance, rents and other expenses affecting said properties shall be prorated as of the date this exchange is completed and consummated, which shall be the closing date of said escrow. Any act required to be done may be extended not longer than thirty days by the hereinafter named agent.

First Party is making this offer to exchange real and personal property subject to the acceptance of same by Second Parties within ten (10) days from date hereof.

In the event this offer to exchange real and personal property is accepted by the Second Parties within ten (10) days from date hereof, all parties hereto agree to open, within fifteen days thereafter (if not rescinded as before provided), an escrow for the handling of this transaction with the Beverly Hills, California, branch of the California Bank, with appropriate instructions to the said escrow holder to proceed to complete and consummate this exchange in accordance with the terms and conditions set forth herein.

First Party is to have the use of the large Bu-tane-equipped tractor and the large Carry-all, which pieces of equipment are now on the property of the Second Parties, at no charge, for the purpose of carrying on the land leveling and other work needed on the Nevada property, during the Calendar year of 1952. First Party agrees to turn over the said equipment at the end of the said year

in as good condition as it is on the closing date of said escrow.

Harley Moore, licensed real estate broker of Beverly Hills, California, and Reno, Nevada, is hereby authorized to act as agent for all parties hereto and may accept commission therefrom and should this offer be accepted by the Second Parties under the terms and conditions hereof, the undersigned agrees to pay said agent the sum of \$2,500 commission for services rendered, said sum to become due and payable upon the closing of said escrow, and the said escrow instructions shall so recite. Should the above-named agent co-operate with another agent or other agents in this exchange, the undersigned agrees that the commission herein provided to be paid may be divided by them in any manner satisfactory to them.

Dated December 28, 1951.

**METROPOLITAN FINANCE CORPORATION  
OF CALIFORNIA,**

By /s/ E. S. SHIPP. [17]

## Acceptance

The foregoing offer is hereby accepted upon the terms and conditions stated and the undersigned, hereinbefore called the Second Parties, agree to pay Harley Moore, licensed real estate broker of Beverly Hills, California, and Reno, Nevada, the sum of \$7,500 commission for services rendered, said sum to become due and payable upon the closing of said escrow, and the said escrow instructions shall so recite. The undersigned further agree that should the above-named agent cooperate with another agent or other agents in this exchange, that the commission herein provided to be paid may be divided by said agents in any manner satisfactory to them.

Dated January 5, 1952.

/s/ CLIFTON C. PIERCE,

/s/ EILEEN E. PIERCE. [18]



ESCROW INSTRUCTIONS

January 7, 1952

To California Bank

Beverly Hills OFFICE
Beverly Hills, CALIF.

MEMO table with columns for Parcel 1 and Parcel 2, and rows for Selling Price, Unpaid Balance, Equity Conveyed, To Balance Equities, Cash, and Purchase Price Trust Deed.

FOR THE PURPOSE OF EFFECTING AN EXCHANGE OF PROPERTIES HEREINAFTER DESCRIBED, Metropolitan Finance Corporation of California

hereinafter designated as FIRST PARTY, hand you Grant deed executed by Metropolitan Finance Corporation of California, CLIFTON C. PIERCE and EILEEN E. PIERCE, husband and wife as joint tenants

Clifton C. Pierce and Eileen E. Pierce, husband and wife hereinafter designated as SECOND PARTY, Grant deed executed by Clifton C. Pierce and Eileen E. Pierce, husband and wife METROPOLITAN FINANCE CORPORATION of CALIFORNIA

First Second First of Trust PARITY will deposit in this escrow the sum of \$ approximately \$12,979.24 for the credit and disposition of the PARITY upon the consummation of this escrow is heretofore provided. PARITY will deliver to the First PARTY, Trust Deed (and

January 7, 1952 approximately \$12,979.24 PARITY in this escrow, the sum of

AS TO PARCEL 1 amount to be given later with liability of \$ real property in the legal description attached hereto and make a part hereof, by reference consisting of three parcels, plus certain personal property as hereinafter referred to.

SHOWING TITLE VESTED IN CLIFTON C. PIERCE and EILEEN E. PIERCE, husband and wife as joint tenants

Second installment General and Special Taxes for the fiscal year 51 52 including PERSONAL PROPERTY TAXES, If any, of my former owner AND ALSO INCLUDING ANY SPECIAL DISTRICT LEVIES, PAYMENT OF WHICH ARE INCLUDED THEREIN AND COLLECTED THEREWITH

All taxes and assessments to be paid or asserted on or before the date of these instructions.

Approximately \$12,979.24 Mortgage Trust Deed securing to indebtedness of \$ as per its terms, now of record, with which I am familiar, and hereby approve, no further approval necessary

TRUST DEED on CALIFORNIA FORM COMPANY form executed by Securing Note for in favor of dated dur years after date, with interest at per cent per annum, from payable Principal and interest payable \$ month, beginning on the day of 19

California Bank is hereby instructed to endeavor to effect simultaneous or concurrent recording of the deeds to Parcels 1 and 2 in the respective county and state in which said properties are situated. Each party understands, however, that through the inability and/or neglect of the Title Companies handling the searches of title to record concurrently as instructed, the deed covering one of the parcels may be recorded and the deed covering the other parcel may not be recorded. Each party releases and holds California Bank harmless on account thereof.

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THE UNIVERSITY OF CHICAGO

DEPARTMENT OF CHEMISTRY

PHYSICAL CHEMISTRY LABORATORY

520 SOUTH MICHIGAN AVENUE

CHICAGO, ILLINOIS 60607

TEL: 773-936-3700

FAX: 773-936-3700

WWW: WWW.CHEM.UCHICAGO.EDU

WWW: WWW.PHYS.CHEM.UCHICAGO.EDU

WWW: WWW.CHEMISTRY.EDU

WWW: WWW.CHEMISTRY.ILLINOIS.EDU

WWW: WWW.CHEMISTRY.INDIANA.EDU

WWW: WWW.CHEMISTRY.IOWA.EDU

WWW: WWW.CHEMISTRY.KY.EDU

Parcel 1: Lot 4 in Block 16 of Tract No. 7260, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 78, Pages 64 and 65 of Maps, in the office of the County Recorder of said County.

Parcel II: Lots 13 and 14 in Block 4 of Tract 9377, in the City of Los Angeles, as per map recorded in Book 129, Pages 3 to 7 of Maps, in the office of the county recorder of said county.

Parcel III: That portion of Lot 12 in Block 4 of said Tract 9377, described as follows:

Beginning at the most easterly corner of Lot 14 in said Block 4; thence South  $7^{\circ} 49' 48''$  East 135.36 feet, more or less, to a point in the curved Southerly line of said Lot 12, distant Westerly thereon 25 feet from the Southeasterly corner thereof; thence Westerly along said Southerly line 75 feet to the Southwesterly corner of said Lot 12; thence North  $14^{\circ} 37' 50''$  West along the Westerly line of said Lot 12, for a distance of 110 feet to the most Westerly corner thereof; thence North  $62^{\circ} 57' 30''$  East along the Northerly line of said Lot 12, for a distance of 85 feet to the point of beginning.



AS TO PARCEL II

Policy of Title Insurance of Washey Title Co. with liability of \$ to be given later real property in the County of Los Angeles, State of California, (designated as Parcel II for the purposes of this escrow) viz: Legal description attached hereto and made a part hereof by reference consisting of one parcel plus certain personal property as hereinafter referred to.

as per map recorded in Book SHAWING, TITLE VESTED IN Page METROPOLITAN FINANCE CORPORATION OF CALIFORNIA of records of said county.

FREE OF ENCUMBRANCES EXCEPT Second, Third and Fourth quarter of all General and Special Taxes for the fiscal year 1951 19     including PERSONAL PROPERTY TAXES if any, of any former owner AND ALSO INCLUDING ANY SPECIAL DISTRICT LEVIES, PAYMENT OF WHICH ARE INCLUDED THEREIN AND COLLECTED THEREWITH:

All taxes and assessments levied or assessed subsequent to date of these instructions

Conditions, restrictions, reservations, covenants, easements, rights and rights of way, of record, if any

Mortgage/Trust Deed securing an indebtedness of \$ 50,000.00 as per its terms, now of record, with which I am familiar, and hereby approve, no further approval necessary

TRUST DEED ON CALIFORNIA TRUST COMPANY form executed by Metropolitan Finance Corporation of California

One \$2,000.00 approximately Clifton C. Pierce and Eileen E. Pierce, husband and wife as joint tenants in favor of during escrow dated      due      years after date, with interest at 5% (five) per cent per annum, from      date      payable on principal payment dates

Principal and interest payable      or more on the      day of      month, beginning on the      day of      month, 1952, and the balance of \$32,000.00 plus interest on or before April 1, 1955.

Should the figure vary from \$2,000.00 on the above described note, then adjustments will be made through this escrow to compensate for same.

AND ALSO, when my escrow held for the Second PARTIES of the following: A Bill of Sale covering certain personal property located on Parcel I hereof (a nine page inventory, copy of which is handed you herewith approved by both parties; no further approval necessary. Four leases covering the property known as 7216 to 7218 Beverly Glen Boulevard, Los Angeles, and you are instructed to have said leases assigned to Clifton C. Pierce and Eileen E. Pierce, husband and wife as joint tenants. Said leases are hereby approved; no further approval necessary.

And also when you can hold for the first party the following: A Bill of Sale covering certain personal property located on Parcel II hereof, a one page inventory of which is handed you herewith approved by both parties; no further approval necessary.

These escrow instructions are drawn pursuant to a certain Exchange Agreement dated December 20, 1951, and executed by the parties hereto, a copy of which is handed you herewith, and shall not in any way be construed to alter, supersede, amend or change said agreement. However, California Bank, as Escrowee, is not to be concerned with the terms, conditions, validity or performance of said agreement.

SECOND PARTIES agree to deliver, transfer and convey all water, water rights, ditches, ditch rights, ditch shares, range rights, pasture rights, and all rights of every kind and nature appertaining to, appertaining to, or attaching to their said real property. These rights include 112.5/100 shares of Old Channel Ditch Co. stock and 786 shares of Young Ditch Co. stock. SECOND PARTIES warrant that 1267 acres of their said real property are included in the Parkland County Water Conservation District which are entitled to, per acre, three and two-thirds acre feet of water per annum, if that amount of water is in the Eye Patch Reservoir. FIRST PARTY shall have fifteen days from the opening date of said escrow to ascertain whether

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That certain parcel of ranch real property consisting of 1,999.07 acres of land, more or less, together with and including all the improvements thereon, situated about two and one half miles North of the City of Lovelock, Nevada, and legally described as:

Township 27 North, Range 31 East, M.D.M.

Section 3: All.

Section 4: SE $\frac{1}{4}$ ; Lots 1 and 2.

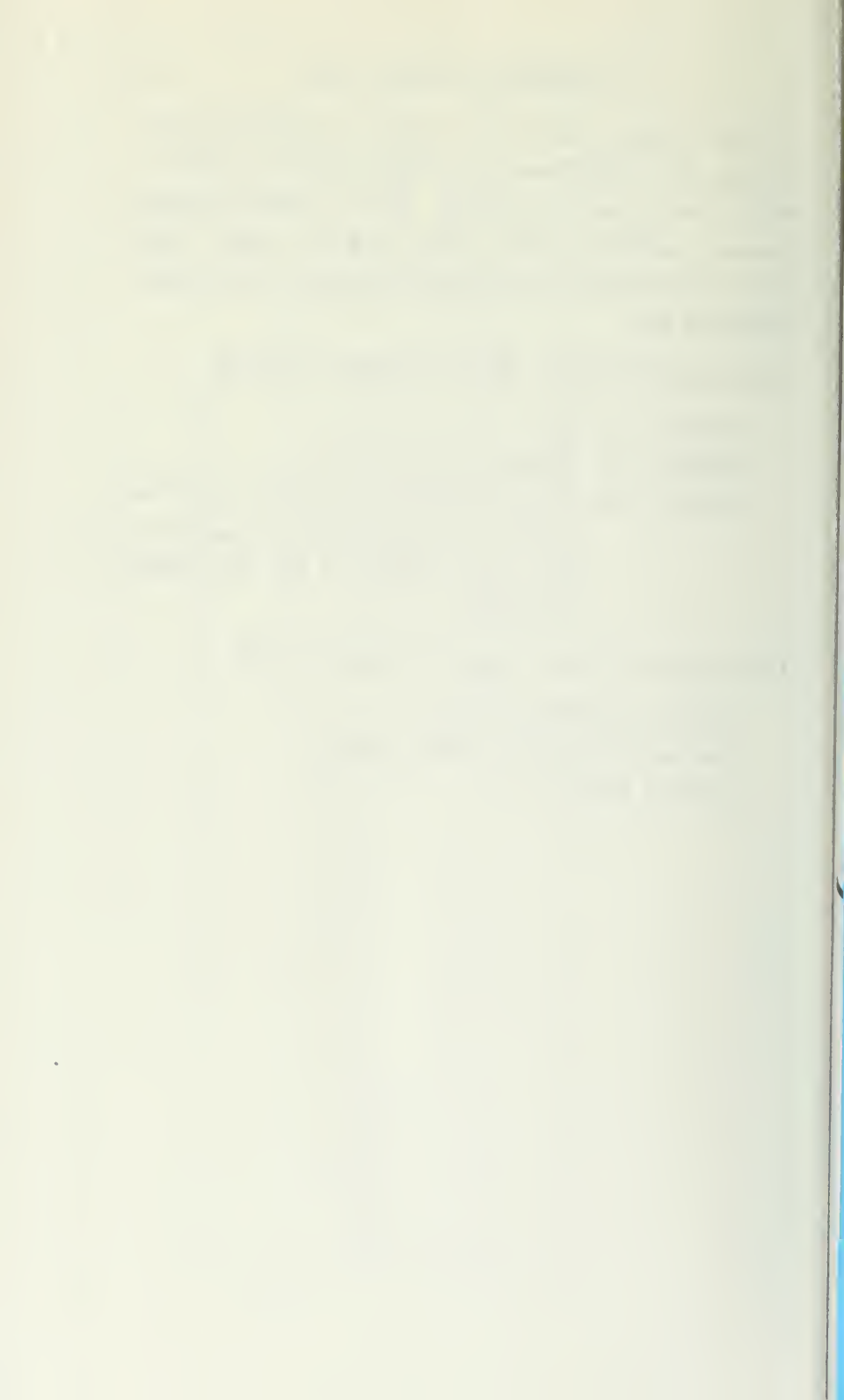
Section 10: Fractional part of the N $\frac{1}{2}$ , and that portion of the SW $\frac{1}{4}$  of said section lying North of the Old Channel Ditch.

Township 28 North, Range 31 East, M.D.M.

Section 26: E $\frac{1}{2}$  of E $\frac{1}{2}$ .

Section 33: E $\frac{1}{2}$  of NE $\frac{1}{4}$ ; SE $\frac{1}{4}$ .

Section 34: All.





ANY POLICY OF TITLE INSURANCE CALLED FOR UNDER THESE INSTRUCTIONS MAY BE ISSUED FOR THE BENEFIT OF ALL PARTIES IN INTEREST AND MAY BE PROCURED FROM ANY TITLE COMPANY OPERATING IN THE COUNTY WHERE THE PROPERTY IS LOCATED, AND WILL BE SUBJECT TO EXCEPTIONS AND CONDITIONS CONTAINED IN SUCH COMPANY'S REGULAR PRINTED FORM, INCLUDING BUT NOT LIMITED TO AN EXCEPTION THAT SAID POLICY WILL NOT INSURE AGAINST LOSS BY REASON OF THE RESERVATION OR EXCEPTION OF ANY WATER RIGHTS, CLAIMS, OR TITLE TO WATER.

FIRST PARTY authorizes you to charge him and, upon completion of this escrow, pay the following:

Commission of \$ 2,500.00 to Harley Moore  
Broker's Item No. \_\_\_\_\_ where address is \_\_\_\_\_  
90.75 for U.S.R. Stamps, which are to be affixed to deed covering Parcel I  
All encumbrances existing to place title on Parcel I in the condition called for

SECOND PARTY authorizes you to charge him and, upon completion of this escrow, pay the following:

Commission of \$ 7,500.00 to Harley Moore  
Broker's Item No. \_\_\_\_\_ where address is \_\_\_\_\_  
237.50 for U.S.R. Stamps, which are to be affixed to deed covering Parcel II  
The commission to be paid by the Second Party is to be evidenced by a 90 day note, executed by Clifton C. Pierce and Kileen E. Pierce in favor of Harley Moore, dated as of \_\_\_\_\_ and you are instructed to deliver said note to Harley Moore at close of escrow.

*Handwritten initials and scribbles on the left margin.*

THE FOLLOWING ADJUSTMENTS ONLY ARE REQUIRED IN THIS ESCROW:

In the above mentioned Mortgage and/or Trust Deeds are now of record against either Parcel I, Parcel II, or both, payments from the owners of the notes secured thereby to be paid to the Escrower at the close of escrow to be \$ approximately \$12,979.21 as to Parcel I, and adjust interest thereon to close of escrow and showing balance of principal thereon to be 50,000.00 as to Parcel II, and adjust interest thereon to close of escrow all such adjustments to be made on basis of such statements

Adjust interest on new Encumbrance as to \_\_\_\_\_ close of escrow by endorsement of title  
close of escrow including all items appearing on tax bills, except taxes on personal property, including all personal property assessed against said property, I, Item I, based on the \_\_\_\_\_ close of escrow

Private rentals on Parcel I, Item I, as of \_\_\_\_\_ close of escrow on basis of statement agreed by both parties, but make no adjustment on uncollected rentals, 2216 to 2218 1/2 South Beverly Glen Boulevard, Los Angeles, and 15,000 La Ombre Drive, Pacific Palisades Piaros Ranch, Lovelock, Nevada

and adjust as follows: Parcel I ----- close of escrow Parcel II ----- transfer fee ----- close of escrow private premiums to ----- private premiums to -----

You may assume that the premiums on all policies have been paid in full and that said policies have not been hypothecated.

EACH PARTY agrees to pay on demand all charges and expenses incurred by you for him, regardless of the continuation of this escrow, including charges for title insurance, for sending in offset statements and beneficiaries' statements and/or demands, for special assessment district report, on property he conveys, for drawing and recording documents he executes, for recording documents in his favor, and your escrow fee as charged.

Metropolitan Title Insurance Company of California documents and checks in his favor to:

From item pertaining to part of the second part at close of escrow, you are instructed to pay to Peter A. Parnalder the sum of \$12,500.00.

*Handwritten signature and initials at the bottom right of the page.*



the figures in this paragraph are correct and if they are found to be correct, then this contract and the said escrow agreement are deemed to be valid and binding on all parties hereto. In the event these said figures are not correct, then FIRST PARTY has the right to withdraw from this contract and the said escrow agreement with no liability on his part. SECOND PARTIES agree to transfer and convey all oil, gas, hydrocarbon and mineral rights, if any, owned by them, and the deed of conveyance shall so recite. All of said items of SECOND PARTIES are being considered on a basis of \$80,000.00, including the amounts of indebtedness thereon.

In the event Party of the First Part shall see fit to withdraw, in accordance with the right given him in the foregoing paragraph, then Party of the First Part agrees there shall be no liability whatsoever on the Party of the Second Part. However, California Bank is not to be concerned with the obtaining or validity of said figures.

Party of the Second Part will hand you an assignment to Peter A. Fennelmer of the First \$10,000.00 payment on the Second Deed of Trust covering Parcel II, which assignment you are to have recorded concurrently with the other documents in this escrow, and said assignment is then to be delivered to Peter A. Fennelmer.

Second party will also hand you a note in the amount of \$1,500.00 executed by Clifton D. Pierce and Helen E. Pierce in favor of Peter A. Fennelmer, which you are instructed to deliver to Fennelmer at close of escrow.

Metropolitan Finance Corporation will hand you a Resolution of the Corporation to make this exchange of properties on the terms and conditions contained herein.

You are instructed to obtain and have assigned to the new owner all heretofore described ~~insurance~~ ~~title~~ charges.

You are instructed to have the documents covering both parcels herein recorded as concurrently as is humanly possible.

You will, as my agent, assign any insurance of mine handed you for use in this escrow.

Make all adjustments and/or pre-payments on the basis of a 30-day month and by credit and/or debit to my account in this escrow.

The expression "close of escrow" shall mean the date the instrument transferring the title to the properties described hereto are recorded or registered.

EACH PARTY AGREES TO CLEAR THE PROPERTY WHICH HE CONVEYS OR CAUSES TO BE CONVEYED TO THE OTHER PARTY, BEFORE DELINQUENCY, OF THE LIEN OF ALL TAXES ASSESSED AGAINST ANY PROPERTY NOT INCLUDED HEREIN. YOU ARE NOT TO BE CONCERNED THEREWITH.

EACH PARTY GUARANTEES THAT THE PREMIUM ON ANY INSURANCE POLICY WHICH HE HANDS YOU OR CAUSES TO BE HANDED YOU HAS BEEN PAID AND THAT SAID POLICIES HAVE NOT BEEN HYPOTHECATED.

Deliver assignment of title and insurance policies, if any, to holder of first encumbrance, or order, if any. Make disbursements by your check. Documents and checks in my favor to be mailed to my address shown below, unless you are otherwise instructed.

If the conditions of this escrow have not been complied with at the time herein provided, you are nevertheless to complete the same as soon as the conditions (except as to time) have been complied with, unless I shall have made written demand upon you for the return of money and/or instruments deposited by me.

NO NOTICE, DEMAND OR CHANGE OF INSTRUCTIONS SHALL BE OF ANY EFFECT IN THIS ESCROW UNLESS GIVEN IN WRITING BY ALL PARTIES AFFECTED THEREBY. In the event conflicting demands are made or notices served upon you with respect to this escrow, the parties hereto expressly agree that you shall have the absolute right at your election to do either or both of the following: withhold and stop all further proceedings in, and performance of, this escrow, or file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights among themselves. In the event such interpleader suit is brought, you shall ipso facto be fully released and discharged from all obligations to further perform any and all duties or obligations imposed upon you in this escrow, and the parties jointly and severally agree to pay you all costs, expenses, and reasonable attorney's fees expended or incurred by you, the amount thereof to be fixed and a judgment thereon to be rendered by the court in such suit.

You are not to be held liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to identity, authority, or rights of any person executing the same, nor for failure to comply with any of the provisions of any agreement, contract, or other instrument filed herein, and your duties hereunder shall be limited to the safekeeping of such money, instruments, or other documents received by you as escrow holder, and for the disposition of same in accordance with the written instructions accepted by you in this escrow.

All parties hereto further agree, jointly and severally, to pay on demand, as well as to indemnify and hold you harmless from and against all costs, damages, judgments, attorney's fees, expenses, obligations and liabilities of any kind or nature which, in good faith, you may incur or sustain in connection with, or arising out of this escrow, and you are hereby given a lien upon all the rights, titles and interest of each of the underdeigned in all escrowed papers and other property and moneys deposited in this escrow, to protect your rights and to indemnify and reimburse you under this agreement.

It is agreed by the parties hereto that so far as your rights and liabilities are concerned, this transaction is an escrow and not any other legal relation and you are as escrow holder only on the terms expressed herein, and you shall have no responsibility of assisting me or any of the parties to this escrow of any sale, lease, loan, exchange, or other transaction involving any property hereto described or of any profit realized by any person, firm or corporation (broker, agent, and parties in this and/or any other escrow included) in connection therewith, regardless of the fact that such transaction(s) may be handled by you in this escrow or in another escrow.

These instructions may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument.

Any amended, supplemental, or additional instructions given shall be subject to the foregoing conditions.

THE FOREGOING TERMS, CONDITIONS, PROVISIONS AND INSTRUCTIONS HAVE BEEN READ AND ARE UNDERSTOOD AND AGREED TO BY EACH OF THE UNDERSIGNED.

*Clifton D. Pierce* (Signature) \_\_\_\_\_ (Address) \_\_\_\_\_ (Zone) \_\_\_\_\_ (Telephone) \_\_\_\_\_  
*Helen E. Pierce* (Signature) \_\_\_\_\_ (Address) \_\_\_\_\_ (Zone) \_\_\_\_\_ (Telephone) \_\_\_\_\_  
METROPOLITAN FINANCE CORPORATION OF CALIFORNIA  
*BEAumont* (Signature) \_\_\_\_\_ Pres. (Address) \_\_\_\_\_ (Zone) \_\_\_\_\_ (Telephone) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Address) \_\_\_\_\_ (Zone) \_\_\_\_\_ (Telephone) \_\_\_\_\_

Endorsed: Filed March 2, 1953.



[Title of District Court and Cause.]

ADDITIONAL STIPULATION OF FACT  
ON SUBMISSION OF CAUSE

It Is Hereby Stipulated by and between the parties hereto, by their respective attorneys:

(1) That Plaintiff is a corporation organized under the laws of the State of Delaware, and that Defendants are citizens of the State of California.

(2) That the matter in controversy is in the amount of \$3,416.66.

(3) That on or about January 5, 1952, the Defendants, in writing, accepted an offer of the Plaintiff, dated December 28, 1951, for the sale and exchange of certain real and personal property. A copy of said offer and acceptance, lacking irrelevant exhibits, was filed with the Court as Exhibit A to a previous Stipulation of Fact filed on or about February 20, 1953, and by this reference thereto is made a part hereof.

(4) That on or about January 7, 1952, the parties hereto executed escrow instructions to the California Bank, Beverly Hills Office, Beverly Hills, California, for the purpose of consummating the said sale and exchange. A [23] copy of said escrow instructions was attached as Exhibit B to the said Stipulation of Fact filed on or about February 20, 1953, and by this reference thereto is made a part hereof.

(5) Said escrow was completed and closed, and

the documents transferring title of the various properties therein exchanged were recorded on April 9, 1952.

(6) 2,856 shares of Young Ditch Company, a corporation, were exchanged by the Defendants pursuant to the contract and transfer to the Plaintiff. That on or about the 27th day of March, 1952, at a special meeting of the Board of Directors of Young Ditch Company, a corporation, an assessment of \$1 per share was levied on the outstanding capital stock of said corporation. Notice of assessment was thereafter sent to stockholders of said corporation under date of March 27, 1952, specifying that any stock upon which the assessment remained unpaid on May 15, 1952, would be delinquent and advertised for sale at public auction, and would be sold to pay any delinquent assessment together with any cost of advertising or expenses of sale.

That the assessment on the shares of Young Ditch Company stock, a corporation, transferred from the Defendants to the Plaintiff pursuant to the said agreement amounted to the sum of \$2,856, being \$1 per share for the said 2,856 shares.

(7) That also transferred from the Defendants to Plaintiff pursuant to the contract were 1,121  $\frac{3}{9}$  shares in Old Channel Ditch Company, a corporation.

(8) That on or about the 7th day of April, 1952, at a meeting of the Board of Directors of the Old Channel Ditch Company, a corporation, an assessment of fifty (50) cents per share was levied upon

the outstanding capital stock of the said corporation. Notice of assessment was thereafter sent to stockholders of said corporation under date of April 10, 1952, specifying that any stock upon which the assessment remained unpaid on May 15, 1952, would be delinquent and advertised for sale at public auction and would be sold to pay any delinquent assessment together with any costs of advertising or expenses of sale.

That the assessment on the shares of stock of the Old Channel Ditch Company, a corporation, transferred from the Defendants to the Plaintiff pursuant to the [24] agreement heretofore described amounted to the sum of \$560.66, being fifty (50) cents per share for the 1,121 <sup>3</sup>/<sub>9</sub> shares of said stock.

(9) That on or about the 14th day of April, 1952, Plaintiff in writing notified the Defendant Clifton C. Pierce of the assessment theretofore made by the Young Ditch Company in the sum of \$2,856, and demanded of said Defendants that they remit to Plaintiff the sum of \$2,856 in order that the said Plaintiff could pay said assessment theretofore levied by the said Young Ditch Company and release said stock of the lien placed upon it by reason of said assessment. That on or about the 16th day of April, 1952, Plaintiff, having received no reply to its demand upon the Defendants that they pay the said assessment of the Young Ditch Company in order not to have such stock sold at

public auction and thus lose said appurtenant stock, paid to the said Young Ditch Company the sum of \$2,856 in payment of said assessment.

(10) That on or about the 29th day of April, 1952, Plaintiff in writing notified the said Clifton C. Pierce of the assessment theretofore made by the Old Channel Ditch Company in the sum of \$560.66 and demanded of said Defendants that they remit to the Plaintiff the sum of \$560.66 together with the sum of \$2,856, being the assessment of the Young Ditch Company stock, in order that said Plaintiff might pay said assessments and release said stock of the lien placed upon the said stock by reason of said assessments. That on or about the 1st day of May, 1952, Plaintiff, having received no reply to its demand upon the Defendants that they pay the said assessments of the Old Channel Ditch Company, in order not to become delinquent in the payment of said stock and in order not to have such stock sold at public auction and thus lose said appurtenant stock, paid to the Old Channel Ditch Company the sum of \$560.66 in payment of said assessment.

(11) That on or about the 12th day of June, 1952, and again on or about the 25th day of July, 1952, the Plaintiff in writing demanded of the said Defendants that they pay to the Plaintiff the sum of \$3,416.66, being the total of the two assessments theretofore levied and paid by the said Plaintiff in order to free the stock transferred to the Plaintiff



from the Defendants pursuant to their written agreement of January 5, 1952. [25]

(12) That no part of the assessments heretofore described were paid by the Defendants but that the entire obligation has been paid by Plaintiff without reimbursement by Defendants.

(13) The funds obtained by Old Channel Ditch Company and Young Ditch Company as a result of the said assessments above referred to were used by said companies to pay for the removal of certain willow trees and debris, and otherwise to clean out ditches and water channels for the benefit of the Nevada property which was the subject of said escrow, and also for the benefit of the other properties to which stock in said ditch companies was also appurtenant; assessments for this purpose have been made by each of said companies at irregular intervals in the past, generally not less than three (3) years nor more than five (5) years apart, but, for the purposes of this litigation, it is stipulated that an assessment for this purpose shall be considered to be made every four (4) years.

(14) The foregoing Stipulation of Fact is for the purpose of agreeing as to the existence of the fact but does not admit the materiality or the weight to be given such fact, and each party reserves the right to file briefs pursuant to the further stipulation below:

It Is Further Stipulated by and between the parties hereto by and through their respective attorneys:

That the cause now pending before the Court may be submitted May 11, 1953, without further trial or hearing upon the Stipulation of Fact herein contained together with Exhibits "A" and "B" to the previous Stipulation of Fact filed April 20, 1953, both of said exhibits being incorporated herein.

It Is Further Stipulated that Plaintiff shall have a period of twenty (20) days in which to file an opening brief, the Defendants to have twenty (20) days in which to reply, and Plaintiff an additional ten (10) days for rebuttal. [26]

Dated: May 11, 1953.

/s/ MACFARLANE, SCHAEFER  
& HAUN,

By /s/ E. J. CALDECOTT,  
Attorneys for Plaintiff.

JOSEPH D. FLAUM,  
WALTER L. BRUINGTON and  
WALTER L. M. LORIMER,

By /s/ WALTER L. M. LORIMER,  
Attorneys for Defendants.

It Is So Ordered. 5/13/53.

/s/ WM. M. BYRNE,  
Judge.

[Endorsed]: Filed May 13, 1953. [27]

[Title of District Court and Cause.]

MINUTES OF THE COURT—DEC. 9, 1953

Present: The Hon. Wm. M. Byrne,  
District Judge.

Counsel for Plaintiff: No Appearance.

Counsel for Defendants: No appearance.

Proceedings:

Good cause appearing, the cause having heretofore on May 4, 1953, been submitted on filing of stipulation of facts and briefs,

It Is Ordered that judgment be for defendant, and that counsel for defendants prepare and submit findings and judgment in accordance with Local Rule 7.

Counsel notified.

EDMUND L. SMITH,  
Clerk;

By EDW. F. DREW,  
Deputy Clerk. [28]

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled cause came on regularly for hearing on Monday, May 4, 1953, in the above-

entitled court, the Honorable William M. Byrne, Judge presiding; Macfarlane, Schaefer & Haun and E. J. Caldecott appearing as attorneys for plaintiff, and Joseph D. Flaum, Walter L. Bruington and Walter L. M. Lorimer appearing as attorneys for defendants Clifton C. Pierce and Eileen E. Pierce, and the case having been dismissed against John Doe, Jane Doe and Richard Roe Corporation, and the matter having been submitted for decision upon a stipulation of facts, and memoranda of law having been filed, and the court having considered the same and being fully advised, the court makes the following findings of fact: [29]

### Findings of Fact

#### I.

Plaintiff is a corporation organized under the laws of the State of Delaware. Defendants are citizens of the State of California.

#### II.

The matter in controversy is in the amount of \$3,416.66.

#### III.

On or about January 5, 1952, the Defendants, in writing, accepted an offer of Plaintiff, dated December 28, 1951, for the sale and exchange of certain real and personal property.

#### IV.

On or about January 7, 1952, the parties hereto executed escrow instructions to the California Bank, Beverly Hills Office, Beverly Hills, California, for

the purpose of consummating the said sale and exchange.

V.

Said escrow was completed and closed, and the documents transferring title of the various properties therein exchanged were recorded on April 9, 1952.

VI.

2,856 shares of Young Ditch Company, a corporation, were exchanged by Defendants pursuant to the contract and transferred to Plaintiff.

VII.

On or about March 27, 1952, at a special meeting of the Board of Directors of Young Ditch Company, a corporation, an assessment of \$1.00 per share was levied on the outstanding capital stock of said corporation. Notice of Assessment was thereafter sent to stockholders of said corporation under date of March 27, 1952, specifying that any stock upon which the assessment remained unpaid on May 15, 1952, would be delinquent and [30] advertised for sale at public auction, and would be sold to pay any delinquent assessment together with any cost of advertising or expenses of sale.

VIII.

The assessment on the shares of Young Ditch Company stock so transferred was \$2856.00.

IX.

Defendants also transferred to Plaintiff pursuant

to said contract 1121 3/9 shares in Old Channel Ditch Company, a corporation.

### X.

On or about April 7, 1952, at a meeting of the Board of Directors of Old Channel Ditch Company, an assessment of fifty cents per share was levied upon the outstanding capital stock of the said corporation. Notice of assessment was thereafter sent to stockholders of said corporation under date of April 10, 1952, specifying that any stock upon which the assessment remained unpaid on May 15, 1952, would be delinquent and advertised for sale at public auction and would be sold to pay any delinquent assessment together with any costs of advertising or expenses of sale.

### XI.

The assessment on the shares of stock of Old Channel Ditch Company which Defendants transferred to Plaintiff pursuant to the said contract was \$560.66.

### XII.

On April 14, 1952, plaintiff notified defendant Clifton C. Pierce in writing of the assessment theretofore made by the Young Ditch Company and demanded that defendants remit to plaintiff \$2856.00, in order that plaintiff could pay the said assessment, and release said stock of any lien placed upon it by reason of said assessment. On April 16, 1952, in order to prevent sale of the stock at public auction, plaintiff paid to Young Ditch [31] Com-

pany the amount of said assessment, not having theretofore received any reply to its demand from defendants.

XIII.

On April 29, 1952, Plaintiff notified Defendant Clifton C. Pierce in writing of the assessment theretofore made by the Old Channel Ditch Company, and demanded of Defendants that they remit to Plaintiff the amount of said assessment, as well as the amount of the Young Ditch Company assessment, in order that Plaintiff might pay said assessments and release said stock from any lien placed upon it by reason of said assessments. On May 1, 1952, in order to prevent sale of the stock at public auction, Plaintiff paid to Old Channel Ditch Company the amount of its assessment, not having theretofore received any reply to its demand of April 29, 1952, from Defendants.

XIV.

On June 12, 1952, and on July 25, 1952, Plaintiff demanded of Defendants, in writing, that they pay Plaintiff the sum of \$3416.66, being the total of the two said assessments which had theretofore been paid by Plaintiff.

XV.

No part of the assessments heretofore described was paid by Defendants, and the entire amount of said assessments was paid by Plaintiff, without reimbursement by Defendants.

XVI.

The funds obtained by Old Channel Ditch Com-

pany and Young Ditch Company as a result of the said assessments above referred to were used by said companies to pay for the removal of certain willow trees and debris, and otherwise to clean out ditches and water channels for the benefit of the Nevada property which was the subject of said escrow, and also for the benefit of the other properties to which stock in said ditch companies was also appurtenant. Assessments for this purpose have been made by each [32] of said companies at irregular intervals in the past, generally not less than three years nor more than five years apart. The parties have stipulated that for the purpose of this litigation, an assessment for this purpose shall be considered to be made every four years.

#### Conclusions of Law

From the foregoing facts, the court makes the following conclusions of law:

#### I.

At the time Plaintiff paid said assessments, and at all times thereafter, Defendants were under no duty or obligation to pay said assessments, nor any part thereof.

Dated: December 23, 1953.

/s/ WM. M. BYRNE,  
Judge.

Affidavit of Service by Mail attached.

Lodged December 15, 1953.

[Endorsed]: Filed December 23, 1953. [33]



In the District Court of the United States for  
the Southern District of California, Central  
Division

No. 14,612-WB

METROPOLITAN FINANCE CORPORATION  
OF CALIFORNIA, a Corporation,

Plaintiff,

vs.

CLIFTON C. PIERCE, EILEEN E. PIERCE,  
JOHN DOE, JANE DOE and RICHARD  
ROE CORPORATION, a Corporation,

Defendants.

### JUDGMENT

The above-entitled cause came on regularly for hearing on Monday, May 4, 1953, in the above-entitled court, the Honorable William M. Byrne, Judge presiding; Macfarlane, Schaefer & Haun and E. J. Caldecott appearing as attorneys for plaintiff, and Joseph D. Flaum, Walter L. Bruington and Walter L. M. Lorimer appearing as attorneys for defendants Clifton C. Pierce and Eileen E. Pierce, and the case having been dismissed against John Doe, Jane Doe and Richard Roe Corporation, and the matter having been submitted for decision upon a stipulation of facts, and memoranda of law having been filed, and the court having considered the same and being fully advised, and the court having

heretofore made and caused to be filed its written findings of fact and conclusions of law, [35]

It Is Ordered, Adjudged and Decreed that plaintiff take nothing by reason of its complaint.

Dated: December 23, 1953.

/s/ WM. M. BYRNE,  
Judge.

Affidavit of Service by Mail attached.

Lodged December 15, 1953.

[Endorsed]: Filed December 23, 1953.

Docketed and entered December 23, 1953. [36]

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

To Clifton C. Pierce, Eileen E. Pierce and to Joseph D. Flaum, Walter L. Bruington and Walter L. M. Lorimer, Their Attorneys:

Notice Is Hereby Given that the Metropolitan Finance Corporation of California, a corporation, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Final Judgment entered in this action on December 23, 1953.

Dated this 18th day of January, 1954.

MACFARLANE, SCHAEFER  
& HAUN,

By /s/ E. J. CALDECOTT,  
Attorneys for Plaintiff-  
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 21, 1954. [38]

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[Title of District Court and Cause.]

POINTS ON WHICH THE APPELLANT  
INTENDS TO RELY ON APPEAL

Pursuant to Rule 75(d) of the Federal Rules of Civil Procedure, appellant states the points on which it intends to rely in the appeal in this action are as follows:

I.

The Court erred in granting judgment for the defendants in this action.

II.

The Court erred in concluding that the plaintiff paid the assessments in this action but that defendants were under no duty or obligation to pay said assessments or any part thereof.

III.

The Court erred in not concluding that the assess-

ments which were levied during the period of escrow were to be paid by the [40] defendants.

Dated this 18th day of January, 1954.

MACFARLANE, SCHAEFER  
& HAUN,

By /s/ E. J. CALDECOTT,  
Attorneys for Plaintiff-  
Appellant.

[Endorsed]: Filed January 21, 1954. [41]

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[Title of District Court and Cause.]

#### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 45, inclusive, contain the original Complaint; Answer; Stipulation of Fact, Additional Stipulation of Fact; Minutes of the Court for December 9, 1953; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Statement of Points on Appeal and Designation of Record on Appeal, which constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 2d day of February, A.D. 1954.

[Seal]                      EDMUND L. SMITH,  
  Clerk;

By /s/ THEODORE HOCKE,  
  Chief Deputy.

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[Endorsed]: No. 14,222. United States Court of Appeals for the Ninth Circuit. Metropolitan Finance Corporation of California, Appellant, vs. Clifton C. Pierce and Eileen E. Pierce, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed February 3, 1954.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

